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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

AUG 1 2016

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, reopened on the petitioner's motion, and denied again. The matter and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an anthroposophical community. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a coworker. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation. The director also found that the petitioner had failed to establish that the petitioner qualifies as a religious denomination. The director also cited documentation which seemed to emphasize the petitioner's provision of educational and therapeutic services, rather than the petitioner's religious character.

On appeal, counsel argues that the director's "materialist" perspective relies on too narrow a definition of what constitutes religious work.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious

denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be paid.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a “religious occupation” and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term “traditional religious function” and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

David A. Spears, executive director of the petitioning entity, describes the petitioner and the beneficiary’s role there:

We are a non-denominational Christian community. At [our community], 10 able adults (called Coworkers) reside together with 19 developmentally disabled residents in an intimate, fostering community setting. Co-workers offer continual guidance in all

aspects of the lives of the disabled adults in their care, both practical and spiritual, and provide continual religious counseling and instruction on a weekly basis. . . . Co-workers are trained to provide that level of daily soul care and spiritual guidance necessary to ameliorate some of the burden of being born "handicapped." The therapeutic focus at [this facility] is based solely on Anthroposophy. . . .

The main focus of the anthroposophical movement is to help people, especially the developmentally disabled, through Christianizing their daily lives in a communal and educational setting. . . .

[The beneficiary] is well qualified to be a coworker-houseparent. He has been employed by us in this capacity as described below since January 1998 to the present.

He resides with a group of handicapped residents and shares responsibility for their daily care, safety, well being and spiritual guidance. Aside from residential care, he also assists and supervises mentally disabled adults in daily therapeutic work and activities.

It is important to understand that our entire therapeutic approach is based on Rudolf Steiner's Christian teachings. These teachings are not separate and apart from our daily lives.

Mr. Spears offers the following breakdown of the beneficiary's duties:

Houseparent Co-worker – (25 hours per week)

- *Personal Care* – Assisting disabled residents in accomplishing the normal daily tasks of their personal needs & hygiene – every day of the week, all times.
- *Bible Instruction* – ½ hour daily, in the mornings, and our Saturday Bible Evenings. As a Coworker, [the beneficiary] helps to foster [the petitioner's] ongoing work to create and deepen our spiritual foundations through leadership, instruction and participation in daily Christian teachings and also assists our residents in recognition of and participation in Christian holiday and festival celebrations.
- *Cooking, Cleaning, Food shopping & Errands, Laundry, etc.* – Co-workers and residents alike share these household chores – each to their own ability, on a daily basis.

Community Co-worker – (15 hours per week)

- *Woodworking Supervisor* – 3 hours
- *Therapeutic Painting & Music* – 2 hours
- *Recycling Supervisor* – 3 hours
- *Building Maintenance* – 3 hours
- *Landscaping & Animal Care* – 4 hours

- *Outings (Religious, Cultural & Recreational) – as needed*

On November 16, 2000, the director requested evidence of the beneficiary's past employment, including evidence of compensation. The director also stated "[t]he record does not demonstrate that the beneficiary will be employed primarily as a religious worker," and the director requested evidence to establish the specific religious training that individuals must undergo to become anthroposophical coworkers.

On December 5, 2000, counsel wrote to an official at the Vermont Service Center to express various concerns about that Service Center's handling of petitions filed on behalf of anthroposophical coworkers, specifically the beneficiary and three other named aliens. In that letter, counsel focused on the issue of whether the duties of these coworkers constitute a religious occupation.

Counsel has stated "the issue of whether or not anthroposophical workers are, in fact, religious workers for the purposes of the immigration laws was litigated in the case of *Lindenberg v. U.S. Department of Justice, INS [Lindenberg]*, 657 F. Supp. 154 (D.D.C. 1987)." The alien in *Lindenburg* sought Schedule A, group III precertification under 20 C.F.R. § 656.10(c)(2), which applied to "[a]liens with a religious commitment who seek admission into the United States in order to work for a nonprofit religious organization." The judge in *Lindenburg* stated:

The companion regulations at 20 C.F.R. § 656.22(e) explicitly request documentation showing that . . . the alien *either* was engaged primarily in a "religious occupation" *or* in working for a "nonprofit religious organization." Additional documentation must demonstrate that the alien will spend more than 50 percent of his working time in the United States *either* performing a religious occupation *or* working for a nonprofit religious organization. Nothing in these governing regulations mandates that aliens must pursue "religious work" to qualify for Group III(2) classification.

Id. at 160. Counsel acknowledges "this case was litigated under a different statutory and regulatory scheme," but asserts "the underlying issues are identical" and therefore any finding in this matter should conform to the finding in *Lindenberg*. This argument fails, however, because of the very significant differences between the "statutory and regulatory scheme" in place in 1987, when the *Lindenberg* decision was rendered, and now. The specific statutory and regulatory provisions under which this petitioner sought benefits for this beneficiary did not yet exist in 1987. The now-obsolete Department of Labor regulations cited in *Lindenberg* contained a critical provision that no longer exists in the pertinent statute and regulations. As cited above, the judge in *Lindenberg* found that, so long as the employer was a religious organization, the occupation itself need not be a religious occupation. The present regulations, however, clearly require that the occupation itself is religious in nature, and they specifically state that secular employees of religious organizations do not qualify as special immigrant religious workers. 8 C.F.R. § 204.5(m)(2).

In the above letter of December 5, 2000, counsel stated that the letter was not to be construed as a response to the director's request for evidence. On May 14, 2001, the director denied the petition, stating "[o]n December 6, 2000 a letter was received from [counsel] which . . . was not

to be construed . . . as response to requested additional evidence. . . . Since [then] no further correspondence has been received in reference to this petition to date. We now must adjudicate this on the merits of the current record.” The director stated “[t]he record does not support your claims [that] the position of a house parent co-worker/community co-worker, a curative educator or anthroposophy is a religious occupation in your organization.”

The petitioner filed a motion to reopen on June 1, 2001, stating that despite specific instructions, the director had construed counsel’s letter of December 5, 2000 as a response to the request for evidence. As shown above, the director acknowledged counsel’s request in this regard, and counsel’s claim that the director disregarded that request is, therefore, unfounded.

Counsel states that the petitioner submitted a timely response to the request for evidence on January 16, 2001. On motion, the petitioner submits copies of the documents submitted at that time. These documents consist of financial records and background evidence regarding anthroposophy. Counsel contends that this “response was never considered.” The record of proceeding, as it now stands, does not contain any response received in January 2001. If such a response was in fact received, then for some reason it has not been incorporated into the record.

The director granted counsel’s motion to reopen, and again denied the petition on August 14, 2002. The director stated “it appears that the beneficiary’s duties are primarily educational and care giving, focusing on social development and cultural enrichment of the residents. . . . Merely performing certain tasks of a spiritual nature, such as conducting Bible study is not sufficient to establish that the position qualifies as a religious occupation.” The director further stated “the record does not indicate that [the petitioner] is a ‘denomination’ nor that the beneficiary has been a ‘member’ for two years.” The director also noted that, according to the financial information submitted by the petitioner, the beneficiary earned only \$4,500 in 1998 and \$6,450 in 1999.

On appeal from the director’s decision, counsel asserts that the director’s “conclusion that the position offered is not in a religious occupation is contrary to the evidence.” This evidence includes a court case from 1987 in which the judge concluded that because the alien had demonstrated sufficient “religious commitment,” the occupation itself need not include actual “religious work.” *Lindenberg* at 161. Thus, the judge in *Lindenberg* never contested or refuted the Immigration and Naturalization Service’s finding that the alien’s occupation is not a religious occupation; the judge simply found that the Service’s finding was not disqualifying.

Counsel asserts that the occupations of coworker and houseparent “are traditional occupations in the Anthroposophical Movement, and relate directly to its religious doctrines and goals. Indeed, no analogous position exists outside the Anthroposophical Movement.” There are individuals, outside of Anthroposophy, who assist the mentally handicapped in their daily lives, but these individuals are obviously employed in a secular capacity.

Counsel states that “the sanctification of daily life . . . is the heart of the Anthroposophical Movement.” The record indicates that the beneficiary’s official duties include woodworking, building maintenance, food shopping and laundry. These are pervasively secular activities that do not become religious functions based on the motivations of the person performing the activities. Secular activities that are regularly performed by people of a wide range of faiths (and by non-religious individuals as well) do

not become qualifying religious work simply because the petitioner deems them to have been “sanctified.”

Counsel condemns the director’s “conception of ‘religion’ as a part-time, ritually-oriented activity,” whereas for the beneficiary and the petitioner, “religious work is a full-time occupation involving daily life beyond rituals.” The regulations do take into account that some religious workers are fully committed throughout their waking hours, hence the distinction between a “religious occupation” and a “religious vocation.” 8 C.F.R. § 204.5(m)(2) defines the latter as “a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.”

Counsel has claimed that anthroposophical co-workers live a “nearly monastic lifestyle” but stops short of claiming that the beneficiary’s occupation qualifies as a vocation. Counsel also has compared workers in the beneficiary’s occupation to “Catholic nun[s],” but refers to nuns as working in a “religious occupation” whereas the regulations specifically place nuns within the category of religious vocations, as distinct from religious occupations. Nuns and monks are bound by vows to their vocations; there is no indication that the beneficiary has made a comparable binding commitment to his work. (A long history in the occupation is not presumptively evidence of any formal commitment along the lines of a monk’s vows.) The petitioner has submitted a copy of its “Houseparent Job Description,” which includes an agreement executed between the beneficiary and David Spears. This document is, in effect, a job offer letter like those encountered in many secular occupations, and there is no indication that the beneficiary’s signature on the job description is a binding, permanent sign of commitment.

If the beneficiary’s duties do not constitute an actual religious vocation (and counsel never claims that they do), then the petitioner works in a religious occupation which, by regulation, must involve the performance of traditional religious duties rather than pervasively secular duties carried out with a spiritual mindset. The regulations do not provide for an amalgamation of “monastic” infusion of religious purpose into daily activities with the looser strictures of an occupation.

Counsel quotes the director’s finding that stated “the record does not indicate that [the petitioner] is a ‘denomination’ nor that the beneficiary has been a ‘member’ for two years.” On page 3 of the appeal brief, counsel states “[t]he Anthroposophical Movement is a non-denominational Christian religious organization.” On page 4 of the brief, counsel states that the petitioning entity is “affiliated with a denomination (here, the international Anthroposophical Movement).” On page 5 of the brief, counsel quotes David A. Spears, who stated that the petitioning entity is “a non-denominational Christian community.” On page 6, counsel asserts “the international Anthroposophical Movement . . . is the ‘denomination’ under the regulations.” Thus, counsel repeatedly alternates between calling the Anthroposophical Movement “a denomination” and “non-denominational.”

The director observed that the petitioner paid the beneficiary \$4,500 in 1998 and \$6,450 in 1999. Counsel asserts “[t]he amount paid to a religious worker is not a lawful consideration.” The director, however, did not state or clearly imply that the salary was a factor in the denial. Rather, the director cited the salaries as part of a discussion of the documentation that the petitioner has submitted to show the beneficiary’s past employment there. This documentation includes the beneficiary’s Form W-2

Wage and Tax Statements and the petitioner's quarterly wage reports, all of which support the assertion that the beneficiary is an "employee" of the petitioner, rather than a monk-like individual bound by vows or similar commitment to the petitioner.

In denying the petition for the second time, the director stated "[t]he record contains documentation showing the tax exempt status of [the petitioner] as a religious organization under section 501(c)(3) of the Internal Revenue Code of 1986. However, a review of the foundation's by-laws indicates the organization's purposes are 'charitable and educational.'"

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organization as well. Internal Revenue Service Publication 557 reads, in pertinent part:

Types of organizations that generally qualify [under section 170(b)(1)(A)(vi) of the Code] are:

- Museums of history, art, or science,
- Libraries,
- Community centers to promote the arts,
- Organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama, or for some other direct service to the general public, and
- Organizations such as the American Red Cross or the United Way.

Clearly, an organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the Code need not be a religious organization. The evidence presented does not persuasively show that the petitioner's tax exemption derives from its religious character, rather than from its status as a publicly-supported charitable and educational institution.

Counsel states that the director has taken excerpts from the petitioner's by-laws out of context. It remains that the petitioner has not established that the petitioner's tax-exempt status derives primarily from its religious character, rather than from its educational or social service programs.¹

When examined as a whole, the record shows that while the beneficiary's motivations may be primarily religious, the activities he performs for the petitioner and its residents are predominantly secular in nature. The record further demonstrates that the petitioner is employed in an occupation, rather than committed to a vocation, and therefore the nature of the beneficiary's duties is relevant when determining whether his work constitutes a religious occupation. The case law cited by counsel stipulated that the alien's work itself was not religious in nature, which was permissible under the law as it stood in 1987 before new legislation and regulations introduced critical new requirements.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ In this respect, it is instructive to review the petitioner's web site, <http://www.lukascommunity.org>. From the tone and content of this site, it is clearly intended as a promotional tool to attract clients. The web site makes no reference at all to "Christianizing" the mentally disabled; instead, the site indicates "[t]he community welcomes persons of all races, *creeds*, and nationalities" (emphasis added). The mission statement on the web site states that the petitioner "is a year round residential community for adults with developmental disabilities" and "a not for profit organization whose purpose and striving is to develop and foster social-therapeutic values in a community setting." While the mission statement contains one mention of "spiritual activity," the emphasis is not on the spiritual or religious aspect. The mission statement promises "economic, social, and cultural activities without distinction as to race, *creed*, color, sex, national origin or disability." The site mentions "the teachings of [Anthroposophy founder] Rudolf Steiner" but does not specify the nature or religious focus of those teachings. The site's only reference to Christianity is an oblique one, explaining that the petitioner "derives its name from the Gospel writer Luke, the 'beloved physician' . . . [who] was also an artist." The site indicates that Luke symbolizes the petitioner's "striving to create an artistically therapeutic environment in which inner development can take place."

If the petitioning entity is a pervasively Christian organization, infused at every level with religious content and purpose, then the petitioner has made no effort to convey this information in its promotional materials. The repeated references to the petitioner's acceptance of people of "all . . . creeds" does not readily lead the reader to conclude any specifically Christian orientation.

The content of the petitioner's own web site shows that its public face heavily de-emphasizes any religious focus. Given this information, it is by no means unreasonable to question whether the petitioner's tax-exempt status derives primarily from its religious nature, rather than its educational or therapeutic missions.